Joseph Young
Sr. VP & General Counsel

December 2, 2013

Ruth Milkman
Chief of Staff
Office of the Chairman
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: ***Amendment of the Commission's Rules Related to Retransmission Consent, MB Docket No. 10-71; 2010 Quadrennial Review – Review of the commission's Broadcast Ownership Rules, MB Dockets No. 09-182; 07-294***

Dear Ms. Milkman:

On behalf of myself and my colleagues at Mediacom Communications Corporation, congratulations on being named Chairman Wheeler's Chief of Staff. We look forward to having the opportunity to meet with you and other members of the Chairman's staff to discuss the Commission's agenda and, in particular, the need for prompt Commission action to address the marketplace and regulatory failures that have left consumers with no protection from skyrocketing retransmission consent fees and service disruptions.

Nearly three years ago, the Commission initiated a rulemaking proceeding to consider making revisions to its retransmission consent rules. In commencing that proceeding, the Commission acknowledged that competitive conditions in the video programming marketplace have changed since 1992, producing an imbalance in negotiating power between broadcasters and MVPDs that is adversely impacting consumers. Yet, despite its recognition of that fact and the entreaties of a broad coalition of industry stakeholders and consumer and business groups, the Commission has failed to take any action to correct this market failure or stem the tide of unreasonable retransmission consent fee increases and service interruptions. That passivity is especially grievous because, in creating the retransmission consent right, Congress made it quite clear that service disruptions and increases in basic tier prices were two results that would stand the legislation on its head. The legislative history leaves no doubt that the Commission has both the responsibility and the power to act if the law turned out to have unintended consequences.

The Commission's failure to fulfill that responsibility by updating its retransmission consent rules has been exacerbated by, and is exacerbating, a separate regulatory and marketplace failure: the unchecked consolidation that is occurring in local broadcast television markets. A recent study published by Free Press, entitled "Cease to Resist: How the FCC's Failure to Enforce Its Policies Created a New Wave of Media Consolidation," documents how broadcasters are using "shell" companies to evade rules intended to prevent a single entity from controlling the operations of multiple "Big Four" network affiliates in a single DMA.

Broadcasters attempt to defend their blatant disregard for the letter and intent of the Commission's rules by claiming that their practices produce cost-saving efficiencies. Similarly, the broadcasters try to justify their retransmission consent demands by asserting that the money is needed and used to enable local stations to provide critical local content to viewers in their markets. The Commission accepts these claims without holding the stations to any burden of proof, joining in the pretense that the structural shams used to evade the rules are legitimate by, for all intents and purposes, automatically approving the proposed transactions. But in reality, neither the consolidation that is occurring in local television markets nor the increasing demands for retransmission consent compensation are benefitting the public. Rather, they are benefitting the bottom line of the stations' corporate parents, who use the retransmission consent revenues they collect for anything and everything but funding more or better locally-originated programming and squeeze out even more money by consolidating and cutting the news operations of acquired stations.

A broadcaster that eliminates its local competition for advertising and programming not only enjoys higher profits, but also has less incentive to reinvest those profits in the local news and informational programming that, as part of their social compact with the American public, local stations are supposed to be providing. A review that we conducted of the program schedules of over 130 stations owned or managed by multiple station groups dramatically illustrates this point: during the hours from 6 AM to midnight, these stations aired, on average, fewer than two hours of locally-produced news or informational programming per day. Indeed, we found that thirty-eight percent of the stations we reviewed did not produce even a single minute of local news or locally-produced programming.

Nor do the savings that accrue to local broadcasters when they consolidate operations within a market flow back to consumers in the form of lower retransmission consent fees. Quite the contrary: evidence presented in both the retransmission rulemaking and the broadcast ownership proceeding indicates that MVPDs pay a premium when they negotiate retransmission consent with a broadcaster who has the additional leverage that comes with control over more than one Big Four affiliate in a market. Even acquisitions that do not create new duopolies drive up the prices consumers ultimately pay to watch broadcast television simply because the increased size of the acquiring companies enhances their ability to use actual and threatened shutoffs to force distributors to capitulate to their demands. These facts, in turn, mean that a broadcaster can essentially finance its acquisition of additional stations through the increased retransmission consent revenues that the transaction will generate. The result is an ongoing cycle of station acquisitions, increased retransmission consent fees, and reductions in local content – all to the detriment of consumers.

We do not ask you to simply take our word for the situation described above. There is a wealth of empirical evidence establishing that the real and virtual consolidations occurring in the broadcast industry since cash retransmission consent payments began in earnest have not produced the promised "synergies" and other benefits, but rather are resulting in significantly higher retransmission consent fees that are ultimately borne by consumers, homogenization of news programs and websites, loss of independent voices, fewer choices for viewers and enhanced station market power over advertisers and syndicators.

If broadcast consolidation was only having the impact described above, it would be reason enough for the Commission to actively engage on this issue. But another way that broadcast consolidation threatens the public interest is by vesting a huge amount of the nation's broadcast spectrum in a handful of companies, just ahead of the planned incentive auctions. This concentration of spectrum ownership poses a potential risk to the success of the spectrum auction and the programs, such as FirstNet, that are dependent on a successful spectrum auction.

Chairman Wheeler, in one of his first interviews after taking office, described himself as "rabidly pro-competition." He also acknowledged that "competition is not something that happens in a vacuum" and that the Commission has a role to play in protecting and promoting competitive results that advance the interest of the American public. We are encouraged by those statements. A chairman that is rabidly pro-competitive will not continue to condone or ignore broadcast industry practices that take advantage of regulatory and marketplace failures. And a chairman that recognizes that his "client" is the public will not shy away from using the broad authority that the Commission possesses to correct such regulatory and market failures.

Therefore, if the Commission under Chairman Wheeler does nothing else, it should stop accepting at face value the broadcasters' claims that increased concentration of station ownership and/or control, both at the local level and nationally, is good for consumers and society as a whole. Rather, the Commission should require the parties to make a quantitative showing that the proposed transaction will provide measurable benefits to the public, not just to the parties' bottom lines. Among other things, the Commission should require the acquirer to produce hard data on the results of prior acquisitions and on its use of retransmission consent fees previously collected so that the Commission can critically assess claims regarding the "synergies" and other asserted consumer benefits that the transaction allegedly will produce.

The Chairman has indicated by word and deed that he intends to hit the ground running on a variety of issues. It is crucial that the issues described above – which have been awaiting Commission action for years – are not lost in the shuffle. Therefore, as stated above, we look forward to engaging with you and other members of Chairman Wheeler's staff at the earliest opportunity.

Very truly yours,

Joseph Young

cc: Maria Kirby
Gigi Sohn